

FILED CLERK, U.S. DISTRICT COURT APR 13 2009 CENTRAL DISTRICT OF CALIFORNIA BY <i>[Signature]</i> DEPUTY

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7 Attorneys for Defendants
8 AKAMAI TECHNOLOGIES, INC. All future discovery filings shall
8 include the following language
9 on the cover page:
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14

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 WESTERN JUDICIAL DISTRICT

18 ROBERT TOWNSEND,

CASE NO. CV 08-5534 SVW (SSx)

19 Plaintiff,

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

20 v.

21 AKAMAI TECHNOLOGIES, INC.;
NELLY MOSER, INC.; PAUL
22 SAGAN; ANDREW SHERMAN;
and ROBERT HUGHES;

23 Defendants.

1 **A. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation would be warranted. Accordingly, the parties hereby
6 stipulate to and petition the Court to enter the following Stipulated Protective
7 Order. The parties acknowledge that this Order does not confer blanket protections
8 on all disclosures or responses to discovery and that the protection it affords
9 extends only to the limited information or items that are entitled under the
10 applicable legal principles to treatment as confidential. The parties further
11 acknowledge, as set forth in Section J, below, that this Stipulated Protective Order
12 creates no entitlement to file confidential information under seal; Civil Local Rule
13 79-5 sets forth the procedures that must be followed and reflects the standards that
14 will be applied when a party seeks permission from the Court to file material under
15 seal.

16 **B. DEFINITIONS**

17 1. Party: Any party to this action, including all of its officers, directors,
18 employees, consultants, retained Experts, and Outside Counsel (and their support
19 staff).

20 2. Disclosure or Discovery Material: All items or information,
21 regardless of the medium or manner generated, stored, or maintained (including,
22 among other things, testimony, transcripts, or tangible things) that are produced or
23 generated in disclosures or responses to discovery in this matter.

24 3. “Confidential” Information or Items: Information (regardless of how
25 generated, stored or maintained) or tangible things that qualify for protection under
26 standards developed under F.R.Civ.P. 26(c).

27 4. “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
28 Extremely sensitive “Confidential Information or Items” whose disclosure to

1 another Party or nonparty would create a substantial risk of serious injury that
2 could not be avoided by less restrictive means.

3 5. Receiving Party: A Party that receives Disclosure or Discovery
4 Material from a Producing Party.

5 6. Producing Party: A Party or non-party that produces Disclosure or
6 Discovery Material in this action.

7 7. Designating Party: A Party or non-party that designates information
8 or items that it produces in disclosures or in responses to discovery as
9 "Confidential" or "Highly Confidential — Attorneys' Eyes Only."

10 8. Protected Material: Any Disclosure or Discovery Material that is
11 designated as "Confidential" or as "Highly Confidential — Attorneys' Eyes Only."

12 9. Outside Counsel: Attorneys who are not employees of a Party but
13 who are retained to represent or advise a Party in this action.

14 10. House Counsel: Attorneys who are employees of a Party.

15 11. Counsel (without qualifier): Outside Counsel and House Counsel (as
16 well as their support staffs).

17 12. Expert: A person with specialized knowledge or experience in a
18 matter pertinent to the litigation who has been retained by a Party or its Counsel to
19 serve as an expert witness or as a consultant in this action and who is not a past or
20 a current employee of a Party or of a competitor of a Party and who, at the time of
21 retention, is not anticipated to become an employee of a Party or a competitor of a
22 Party. This definition includes a professional jury or trial consultant retained in
23 connection with this litigation.

24 13. Professional Vendors: Persons or entities that provide litigation
25 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
26 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)
27 and their employees and subcontractors.

28

1 **C. SCOPE**

2 The protections conferred by this Order cover not only Protected Material
3 (as defined above), but also any information copied or extracted therefrom, as well
4 as all copies, excerpts, summaries, or compilations thereof, plus testimony,
5 conversations, or presentations by Parties or Counsel to or in court or in other
6 settings that might reveal Protected Material.

7 **D. DURATION**

8 Even after the termination of this litigation, the confidentiality obligations
9 imposed by this Order shall remain in effect until a Designating Party agrees
10 otherwise in writing or a court order otherwise directs.

11 **E. DESIGNATING PROTECTED MATERIAL**

12 1. Exercise of Restraint and Care in Designating Material for Protection.

13 Each Party or non-party that designates information or items for protection under
14 this Order must take care to limit any such designation to specific material that
15 qualifies under the appropriate standards. A Designating Party must take care to
16 designate for protection only those parts of material, documents, items, or oral or
17 written communications that qualify – so that other portions of the material,
18 documents, items, or communications for which protection is not warranted are not
19 swept unjustifiably within the ambit of this Order.

20 Mass, indiscriminate, or routinized designations are prohibited.

21 Designations that are shown to be clearly unjustified or that have been made for an
22 improper purpose (e.g., to unnecessarily encumber or retard the case development
23 process or to impose unnecessary expenses and burdens on other Parties), expose
24 the Designating Party to sanctions.

25 If it comes to a Party's or a non-party's attention that information or items
26 that it designated for protection do not qualify for protection at all, or do not
27 qualify for the level of protection initially asserted, that Party or non-party must
28 promptly notify all other Parties that it is withdrawing the mistaken designation.

1 2. Manner and Timing of Designations. Except as otherwise provided in
 2 this Order, or as otherwise stipulated or ordered, material that qualifies for
 3 protection under this Order must be clearly so designated before the material is
 4 disclosed or produced. Designation in conformity with this Order requires:
 5 (a) for information in documentary form (apart from transcripts of
 6 depositions or other pretrial or trial proceedings), that the Producing Party affix the
 7 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
 8 EYES ONLY" on each page that contains protected material. If only a portion or
 9 portions of the material on a page qualifies for protection, the Producing Party also
 10 must clearly identify the protected portion(s) (e.g., by making appropriate
 11 markings in the margins) and must specify, for each portion, the level of protection
 12 being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 13 ATTORNEYS' EYES ONLY"). A Party or non-party that makes original
 14 documents or materials available for inspection need not designate them for
 15 protection until after the inspecting Party has indicated which material it would
 16 like copied and produced. During the inspection and before the designation, all of
 17 the material made available for inspection shall be deemed "HIGHLY
 18 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party
 19 has identified the documents it wants copied and produced, the Producing Party
 20 must determine which documents, or portions thereof, qualify for protection under
 21 this Order, then, before producing the specified documents, the Producing Party
 22 must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
 23 CONFIDENTIAL – ATTORNEYS' EYES ONLY") on each page that contains
 24 Protected Material. If only a portion or portions of the material on a page qualifies
 25 for protection, the Producing Party also must clearly identify the protected
 26 portion(s) (e.g., by making appropriate markings in the margins) and must specify,
 27 for each portion, the level of protection being asserted ("CONFIDENTIAL" or
 28 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

1 (b) for testimony given in deposition or in other pretrial or trial
 2 proceedings, that the Party or non-party offering or sponsoring the testimony
 3 identify on the record, before the close of the deposition, hearing, or other
 4 proceeding, all protected testimony, and further specify any portions of the
 5 testimony that qualify as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 6 ONLY." When it is impractical to identify separately each portion of testimony
 7 that is entitled to protection, and when it appears that substantial portions of the
 8 testimony may qualify for protection, the Party or non-party that sponsors, offers,
 9 or gives the testimony may invoke on the record, or in writing immediately
 10 following the testimony, a right to have up to twenty (20) days to identify the
 11 specific portions of the testimony as to which protection is sought and to specify
 12 the level of protection being asserted ("CONFIDENTIAL" or "HIGHLY
 13 CONFIDENTIAL – ATTORNEYS' EYES ONLY"). Only those portions of the
 14 testimony that are appropriately designated for protection shall be covered by the
 15 provisions of this Order.

16 (c) for information produced in some form other than documentary
 17 and for any other tangible items, that the Producing Party affix in a prominent
 18 place on the exterior of the container or containers in which the information or
 19 item is stored the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 20 ATTORNEYS' EYES ONLY." If only portions of the information or item warrant
 21 protection, the Producing Party, to the extent practicable, shall identify the
 22 protected portions, specifying whether they qualify as "Confidential" or as "Highly
 23 Confidential – Attorneys' Eyes Only."

24 3. Inadvertent Failures to Designate. If timely corrected, an inadvertent
 25 failure to designate qualified information or items as "Confidential" or "Highly
 26 Confidential – Attorneys' Eyes Only" does not, standing alone, waive the
 27 Designating Party's right to secure protection under this Order for such material.
 28 If material is appropriately designated as "Confidential" or "Highly Confidential –

1 Attorneys' Eyes Only" after the material was initially produced, the Receiving
 2 Party, on timely notification of the designation, must make reasonable efforts to
 3 assure that the material is treated in accordance with the provisions of this Order.

4 **F. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 1. Timing of Challenges. Unless a prompt challenge to a Designating
 6 Party's confidentiality designation is necessary to avoid foreseeable substantial
 7 unfairness, unnecessary economic burdens, or a later significant disruption or delay
 8 of the litigation, a Party does not waive its right to challenge a confidentiality
 9 designation by electing not to mount a challenge promptly after the original
 10 designation is disclosed.

11 2. Meet and Confer. A Party that elects to initiate a challenge to a
 12 Designating Party's confidentiality designation must do so in good faith and must
 13 begin the process by conferring directly (in voice-to-voice dialogue; other forms of
 14 communication are not sufficient) with Counsel for the Designating Party. In
 15 conferring, the challenging Party must explain the basis for its belief that the
 16 confidentiality designation was not proper and must give the Designating Party an
 17 opportunity to review the designated material, to reconsider the circumstances,
 18 and, if no change in designation is offered, to explain the basis for the chosen
 19 designation. A challenging Party may proceed to the next stage of the challenge
 20 process only if it has engaged in this meet and confer process first.

21 3. Judicial Intervention. A Party that elects to press a challenge to a
 22 confidentiality designation after considering the justification offered by the *L.R.*
 23 Designating Party may file and serve a motion under Civil Local Rule *37* (and in
 24 compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged
 25 material and sets forth in detail the basis for the challenge. Each such motion must
 26 be accompanied by a competent declaration that affirms that the movant has
 27 complied with the meet and confer requirements imposed in the preceding
 28 paragraph and that sets forth with specificity the justification for the confidentiality

1 designation that was given by the Designating Party in the meet and confer
2 dialogue. The burden of persuasion in any such challenge proceeding shall be on
3 the Designating Party. Until the Court rules on the challenge, all parties shall
4 continue to afford the material in question the level of protection to which it is
5 entitled under the Producing Party's designation.

6 **G. ACCESS TO AND USE OF PROTECTED MATERIAL**

7 1. Basic Principles. A Receiving Party may use Protected Material that
8 is disclosed or produced by another Party or by a non-party in connection with this
9 case only for prosecuting, defending, or attempting to settle this litigation. Such
10 Protected Material may be disclosed only to the categories of persons and under
11 the conditions described in this Order. When the litigation has been terminated, a
12 Receiving Party must comply with the provisions of Section K (FINAL
13 DISPOSITION), below.

14 Protected Material must be stored and maintained by a Receiving Party at a
15 location and in a secure manner that ensures that access is limited to the persons
16 authorized under this Order.

17 2. Disclosure of "Confidential" Information or Items. Unless otherwise
18 ordered by the Court or permitted in writing by the Designating Party, a Receiving
19 Party may disclose any information or item designated "CONFIDENTIAL" only
20 to:

21 (a) the Receiving Party's Outside Counsel of record in this action, as
22 well as employees of said Outside Counsel to whom it is reasonably necessary to
23 disclose the information for this litigation;

24 (b) the officers, directors, and employees (including House Counsel)
25 of the Receiving Party to whom disclosure is reasonably necessary for this
26 litigation;

27 (c) Experts (as defined in this Order) of the Receiving Party to whom
28 disclosure is reasonably necessary for this litigation and who have signed the

1 "Agreement to Be Bound by Protective Order" (Exhibit A);
2 (d) the Court and its personnel;
3 (e) court reporters, their staffs, and professional vendors to whom
4 disclosure is reasonably necessary for this litigation;
5 (f) during their depositions, witnesses in the action to whom
6 disclosure is reasonably necessary and who have signed the "Agreement to Be
7 Bound by Protective Order" (Exhibit A);
8 (g) the author of the document or the original source of the
9 information.

3. Disclosure of "Highly Confidential – Attorneys' Eyes Only"

11 Information or Items. Unless otherwise ordered by the Court or permitted in
12 writing by the Designating Party, a Receiving Party may disclose any information
13 or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
14 only to:

(b) House Counsel of a Receiving Party to whom disclosure is reasonably necessary for this litigation;

20 (c) Experts (as defined in this Order) (i) to whom disclosure is
21 reasonably necessary for this litigation, (ii) who have signed the "Agreement to Be
22 Bound by Protective Order" (Exhibit A), and (iii) as to whom the procedures set
23 forth in Section G(4), below, have been followed;

(d) the Court and its personnel;

25 (e) court reporters, their staffs, and professional vendors to whom
26 disclosure is reasonably necessary for this litigation; and

27 (f) the author of the document or the original source of the
28 information.

1 4. Procedures for Approving Disclosure of "Highly Confidential –
2 Attorneys' Eyes Only" Information or Items to "Experts"

3 (a) Unless otherwise ordered by the court or agreed in writing by the
4 Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this
5 Order) any information or item that has been designated "HIGHLY
6 CONFIDENTIAL – ATTORNEYS' EYES ONLY" first must make a written
7 request to the Designating Party that: (1) identifies the specific HIGHLY
8 CONFIDENTIAL information that the Receiving Party seeks permission to
9 disclose to the Expert; (2) sets forth the full name of the Expert and the city and
10 state of his or her primary residence; (3) attaches a copy of the Expert's current
11 resume; (4) identifies the Expert's current employer(s); (5) identifies each person
12 or entity from whom the Expert has received compensation for work in his or her
13 areas of expertise or to whom the expert has provided professional services at any
14 time during the preceding five years; and (6) identifies (by name and number of the
15 case, filing date, and location of court) any litigation in connection with which the
16 Expert has provided any professional services during the preceding five years.

17 (b) A Party that makes a request and provides the information
18 specified in the preceding paragraph may disclose the subject Protected Material to
19 the identified Expert unless, within seven court days of delivering the request, the
20 Party receives a written objection from the Designating Party. Any such objection
21 must set forth in detail the grounds on which it is based.

22 (c) A Party that receives a timely written objection must meet and
23 confer with the Designating Party (through direct voice to voice dialogue) to try to
24 resolve the matter by agreement. If no agreement is reached, the Party seeking to
25 make the disclosure to the Expert may file a motion as provided in Civil Local
26 Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking
27 permission from the Court to do so. Any such motion must describe the
28 circumstances with specificity, set forth in detail the reasons for which the

1 disclosure to the Expert is reasonably necessary, assess the risk of harm that the
 2 disclosure would entail, and suggest any additional means that might be used to
 3 reduce that risk. In addition, any such motion must be accompanied by a
 4 competent declaration in which the movant describes the Parties' efforts to resolve
 5 the matter by agreement (*i.e.*, the extent and the content of the meet and confer
 6 discussions) and sets forth the reasons advanced by the Designating Party for its
 7 refusal to approve the disclosure. In any such proceeding the Party opposing
 8 disclosure to the Expert shall bear the burden of proving that the risk of harm that
 9 the disclosure would entail (under the safeguards proposed) outweighs the
 10 Receiving Party's need to disclose the Protected Material to its Expert.

11 **H. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
 12 **PRODUCED IN OTHER LITIGATION.**

13 If a Receiving Party is served with a subpoena or an order issued in other
 14 litigation that would compel disclosure of any information or items designated in
 15 this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 16 ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating
 17 Party, in writing (by fax, if possible) immediately and in no event more than three
 18 court days after receiving the subpoena or order. Such notification must include a
 19 copy of the subpoena or court order.

20 The Receiving Party also must immediately inform in writing the Party who
 21 caused the subpoena or order to issue in the other litigation that some or all the
 22 material covered by the subpoena or order is the subject of this Order. In addition,
 23 the Receiving Party must deliver a copy of this Order promptly to the Party in the
 24 other action that caused the subpoena or order to issue.

25 The purpose of imposing these duties is to alert the interested parties to the
 26 existence of this Order and to afford the Designating Party in this case an
 27 opportunity to try to protect its confidentiality interests in the court from which the
 28 subpoena or order issued. The Designating Party shall bear the burdens and its

1 own expenses of seeking protection in that court of its confidential material – and
2 nothing in these provisions should be construed as authorizing or encouraging a
3 Receiving Party in this action to disobey a lawful directive from another court.

4 **I. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has
6 disclosed Protected Material to any person or in any circumstance not authorized
7 under this Order, the Receiving Party must immediately: (a) notify in writing the
8 Designating Party of the unauthorized disclosures; (b) use its best efforts to
9 retrieve all copies of the Protected Material; (c) inform the person or persons to
10 whom unauthorized disclosures were made of all the terms of this Order; and
11 (d) request such person or persons to execute the “Acknowledgment and
12 Agreement to Be Bound” that is attached hereto as Exhibit A.

13 **J. FILING PROTECTED MATERIAL**

14 Without written permission from the Designating Party or a court order
15 secured after appropriate notice to all interested persons, a Party may not file in the
16 public record in this action any Protected Material. A Party that seeks to file under
17 seal any Protected Material must comply with Civil Local Rule 79-5.

18 **K. FINAL DISPOSITION**

19 Unless otherwise ordered or agreed in writing by the Producing Party, within
20 sixty (60) days after the final termination of this action, each Receiving Party must
21 return all Protected Material to the Producing Party. As used in this subdivision,
22 “all Protected Material” includes all copies, abstracts, compilations, summaries, or
23 any other form of reproducing or capturing any of the Protected Material. With
24 permission in writing from the Designating Party, the Receiving Party may destroy
25 some or all of the Protected Material instead of returning it. Whether the Protected
26 Material is returned or destroyed, the Receiving Party must submit a written
27 certification to the Producing Party (and, if not the same person or entity, to the
28 Designating Party) by the sixty (60) day deadline that identifies (by category,

1 where appropriate) all the Protected Material that was returned or destroyed and
2 that affirms that the Receiving Party has not retained any copies, abstracts,
3 compilations, summaries, or other forms of reproducing or capturing any of the
4 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
5 an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
6 correspondence, or attorney work product, even if such materials contain Protected
7 Material. Any such archival copies that contain or constitute Protected Material
8 remain subject to this Protective Order as set forth in Section D (DURATION),
9 above.

10 L. MISCELLANEOUS

11 1. Right to Further Relief. Nothing in this Order abridges the right of
12 any person to seek its modification by the Court in the future.
13 2. Right to Assert Other Objections. By stipulating to the entry of this
14 Order, no Party waives any right it otherwise would have to object to disclosing or
15 producing any information or item on any ground not addressed in this Order.
16 Similarly, no Party waives any right to object on any ground to use in evidence of
17 any of the material covered by this Order.

18

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 Dated: March 3, 2009

LATHAM & WATKINS LLP

21 By:

22 James L. Day
23 Attorney for Defendants AKAMAI
24 TECHNOLOGIES, INC.;
PAUL SAGAN; and ROBERT HUGHES

25 Dated: March 20, 2009

PATRICK J. MANSHARDT

26 By:

27 Patrick J. Manshardt
28 Attorney for Plaintiff
ROBERT TOWNSEND

LATHAM WATKINS
ATTORNEYS AT LAW
101 FIFTH AVENUE
NEW YORK, NY 10003
All future discovery filings shall
include the following language:
on the cover page:
" [Referred to Magistrate Judge
Suzanne H. Segal]"

STIPULATED PROTECTIVE ORDER
Case No. CV 08-5534 SVW (SSK)

IT IS SO ORDERED.

DATED: 4/13/09

Suzanne H. Segal
UNITED STATES MAGISTRATE JUDGE

1 IT IS SO ORDERED

2 Dated: , 2009

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By:

Honorable Stephen V. Wilson
United States District Judge

1 EXHIBIT A

2 AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

3 I, _____ [*print or type full name*], of

4 _____ [*print or type full*
5 *name and address*], declare under penalty of perjury that I have read in its entirety
6 and understand the Stipulated Protective Order that was issued by the United States
7 District Court for the Central District of California on _____, 2009, in the
8 case of *Townsend v. Akamai Technologies, Inc., et. al.*, CV 08-5534 SVW (SSx).

9 I agree to comply with and to be bound by all the terms of this Stipulated
10 Protective Order, and I understand and acknowledge that failure to so comply
11 could expose me to sanctions and punishment in the nature of contempt.

12 I solemnly promise that I will not disclose in any manner any information or item
13 that is subject to this Stipulated Protective Order to any person or entity except in
14 strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District
16 Court for the Central District of California for the purpose of enforcing the terms
17 of this Stipulated Protective Order, even if such enforcement proceedings occur
18 after termination of this action.

19 Date: _____

20 City and State where sworn and signed: _____

21 Printed name: _____

22 Signature: _____

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